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Date: January 21, 2010 Name: Craig A. Summerfield (Reg. No. 37,947) Signature: 

Our Case No. 11371-117
(2003P15168WOUS)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Gilek, et al.)
Serial No.: 10/579,685) Examiner: Longbit Chai
Filed: May 17, 2006) Group Art Unit No. 2131
For: METHOD FOR ACCESSING A) Confirmation No. 9592
DATA PROCESSING SYSTEM)

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
PURSUANT TO 37 C.F.R. § 1.705(d)**

Mail Stop Patent Ext
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

U.S. Patent No. 7,624,430 ("the '430 patent") issued on November 24, 2009. Pursuant to 35 U.S.C. § 154(b), the United States Patent and Trademark Office (PTO) calculated a patent term adjustment of 446 days.

A copy of the Issue Notification for the '430 patent is included herewith as Exhibit A.

Assignee believes that the patent term adjustment should be 472 days. For the reasons stated herein, Assignee respectfully requests reconsideration of this patent term adjustment pursuant to 37 C.F.R. 1.705(d). Please charge the petition fee

pursuant to 37 C.F.R. § 1.18(e) to Deposit Account No. 23-1925. Please charge any additional fee required or credit for any excess fee paid to Deposit Account No. 23-1925.

The PTO calculated the patent term adjustment for the '430 patent based on activities and associated dates detailed in the Patent Application Information Retrieval (PAIR) system Patent Term Adjustment History, attached as Exhibit B. Assignee believes that errors and/or omissions in the calculation and/or the PAIR system Patent Term Adjustment History may have resulted in an incorrect patent term adjustment for the '430 patent as described in detail below. Pursuant to 37 C.F.R. §1.705(d), Assignee files this request for reconsideration within two months of the issue date of the '430 patent. Note that the '430 patent is not subject to a terminal disclaimer.

In summary, Assignee believes that there was an error or omission in the failure to include a period of adjustment relating to failure to issue a patent within three years of the actual filing date of the application in the amount of 26 days pursuant to 37 C.F.R. § 1.703(b) (see section I below). (This period of time constitutes the "B period" or "B delay" under 35 U.S.C. § 154(b)(1)(B).)

Thus, the patent term adjustment should be increased by 26 days, so that the total adjustment should be 446 days + 26 days = 472 days (see section II below).

I. PERIOD OF ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.703(b)

The period of adjustment pursuant to 37 C.F.R. § 1.703(b) (the "B delay") is the number of days in the period beginning on the day ("the 3 year date") after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a).

As indicated by the PAIR system Patent Term Adjustment History, attached as Exhibit B, the total delay by the U.S. Patent Office was 462 days (This period of time constitutes the "A period" or "A delay" under 35 U.S.C. § 154(b)(1)(A)(i)-(iv)), and the delay by the Assignee was 16 days. Based on those calculations, the PTO calculated the period of adjustment for the present application as 446 days. However, that period of adjustment does not take into consideration the additional adjustment due under the 3-year provision of 37 C.F.R. § 1.702(b) known as the "B delay." See *Wyeth et al. v. Dudas*, 88 USPQ 2d 1538 (D.D.C. 2008) and *Wyeth et al. v. Kappos*, Case No. 07-cv-1492 (Fed. Cir. January 7, 2010) (holding that Section 154(b)'s language is clear, unambiguous, and intolerant of the PTO's suggested 3 year delay interpretation) (Exhibit C).

The present application was filed on May 17, 2006 as evidenced by the official filing receipt attached as Exhibit D. The 3-year date determined pursuant to 37 C.F.R. § 1.703(b) is May 17, 2009. A request for continued examination (RCE) was filed on June 12, 2009 and the '430 patent issued on November 24, 2009. The period beginning on the day after May 17, 2009 (the 3 year date) and ending on the patent issuance date of November 24, 2009 is 191 days, and the period beginning on the filing of the Request for Continued Examination (RCE) on June 12, 2009 and ending on the patent issuance date of November 24, 2009 is 165 days. There was no other delay by the PTO during the period between May 17, 2009 (the 3 year date) and the filing of the RCE on June 12, 2009. Thus, pursuant to 37 C.F.R. §1.703(b)(1), the period of adjustment under 37 C.F.R. §1.702(b), which is known as the "B delay" is 191 days – 165 days = 26 days. Assignee respectfully submits that the non-overlapping period of adjustment beyond the

3 year date is 26 days, under 37 C.F.R. § 1.703(b). Accordingly, Assignee respectfully requests that the PTO correct the patent term adjustment to include the 26 days of non-overlapping adjustment.

II. TOTAL PATENT TERM ADJUSTMENT

For the present application, the total patent term adjustment pursuant to 37 C.F.R. § 1.703(f) is the period of adjustment pursuant to 37 C.F.R. § 1.703 reduced by any delay pursuant to 37 C.F.R. § 1.704. Thus, Assignee submits that the patent term adjustment should be 446 days + 26 days = 472 days, instead of the 446 days indicated on the Issue Notification.

Assignee respectfully asserts that the patent term adjustment determined by the PTO for the '430 patent is incorrect. Accordingly, Assignee respectfully requests the PTO to reconsider, and make revisions to the PAIR system Patent Term Adjustment History in view of the previous remarks. In addition, it is respectfully requested that a certificate of correction be issued by the PTO reflecting the correct Patent Term Adjustment. Office personnel are invited to contact Assignee via telephone if such communication would be beneficial in fulfilling this request.

Respectfully submitted,



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